

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|---------------------------------|-------------------|--------------------|
| AMERICAN OVERSIGHT, |) | |
| 1030 15th Street NW, B255 |) | |
| Washington, DC 20005 |) | |
| |) | |
| | <i>Plaintiff,</i> |) |
| |) | |
| v. |) | Case No. 19-cv-652 |
| |) | |
| U.S. DEPARTMENT OF AGRICULTURE, |) | |
| 1400 Independence Avenue SW |) | |
| Washington, DC 20250 |) | |
| |) | |
| | <i>Defendant.</i> |) |
| |) | |

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Agriculture under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Agriculture (USDA) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). USDA has possession, custody, and control of the records American Oversight has requested.

STATEMENT OF FACTS

7. In the fall of 2018, American Oversight submitted three FOIA requests to USDA seeking records reflecting the communications between USDA officials and various industry groups or lobbyists representing them.

Adcock Lobbyist Communications FOIA Request

8. On August 24, 2018, American Oversight submitted a FOIA request to USDA requesting:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat, Lync, Skype, and WhatsApp), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between Rebeckah Adcock and any of the following:

- A) Any employee or representative of CropLife America (including, but not limited to, individuals with email addresses ending in @croplifeamerica.org);
- B) Fred Bosco of CropLife America, through his @croplifeamerica.org email or any other email account or mode of communication;
- C) Kelly Bray of CropLife America, through her @croplifeamerica.org email or any other email account or mode of communication;
- D) Jeff Case of CropLife America, through his @croplifeamerica.org email or any other email account or mode of communication;
- E) Ethan Mathews of CropLife America, through his @croplifeamerica.org email or any other email account or mode of communication;
- F) Riley Titus of CropLife America, through his @croplifeamerica.org email or any other email account or mode of communication;
- G) Courtney DeMarco of CropLife America, through her @croplifeamerica.org email or any other email account or mode of communication;
- H) Dr. Ray McAllister of CropLife America, through his @croplifeamerica.org email or any other email account or mode of communication;
- I) Any employee or representative of CropLife International (including, but not limited to, individuals with email addresses ending in @croplife.org);
- J) Any employee or representative of the American Farm Bureau Federation, “the Farm Bureau,” (including, but not limited to, individuals with email addresses ending in @fb.org);
- K) Any employee or representative of Bayer (including, but not limited to, individuals with email addresses ending in @bayer.com);
- L) Any employee or representative of BASF Corporation, or its affiliates (including, but not limited to, individuals with email addresses ending in @basf.com);
- M) Any employee or representative of Monsanto, and its corporate affiliates (including, but not limited to, individuals with email addresses ending in @monsanto.com);
- N) Any employee or representative of Syngenta, and its corporate affiliates (including, but not limited to, individuals with email addresses ending in @syngenta.com);
- O) Any employee or representative of the Southern Crop Production Association, and its corporate affiliates (including, but not limited to, individuals with email addresses ending in @southcrop.com);

- P) Any employee or representative of the law firm BakerHostetler LLP (including, but not limited to, individuals with email addresses ending in @bakerlaw.com);
- Q) Any employee or representative of the law firm Crowell & Moring LLP (including, but not limited to, individuals with email addresses ending in @crowell.com);
- R) Any employee or representative of the law firm Dentons U.S. LLP (including, but not limited to, individuals with email addresses ending in @dentons.com);
- S) Any employee or representative of the law firm Faegre, Baker, Daniels LLP (including, but not limited to, individuals with email addresses ending in @faegrebd.com);
- T) Any employee or representative of the law firm Latham & Watkins LLP (including, but not limited to, individuals with email addresses ending in @lw.com);
- U) Any employee or representative of the law firm Squire Patton Boggs LPP (including, but not limited to, individuals with email addresses ending in @squirepb.com);
- V) Any employee or representative of the law firm Steptoe & Johnson LLP (including, but not limited to, individuals with email addresses ending in @steptoe.com);
- W) Any employee or representative of the law firm Wiley Rein LLP (including, but not limited to, individuals with email addresses ending in @wileyrein.com)

9. American Oversight requested all responsive records for the period from April, 1, 2017, to the date USDA conducted a search for records.

10. By electronic mail on August 28, 2018, USDA acknowledged receipt of the Adcock Lobbyist Communications FOIA Request. USDA assigned this request the tracking number 2018-OSEC-05830-F.

11. American Oversight has not received any further communications from USDA regarding this FOIA request.

Adcock External Communications FOIA Request

12. On September 4, 2018, American Oversight submitted a FOIA request to USDA requesting:

All email communications sent by Rebeckah Adcock to external entities or individuals with email addresses ending in .org, .com or .net.

Please provide all responsive records from April 1, 2017, to November 15, 2017.

While we request only the emails sent by Ms. Adcock to reduce the search and review burden on the agency, we include within this request the entire chain of any such email message. Consequently, if Ms. Adcock responds to an outside entity's email, the incoming email included in the chain is also responsive to this request.

13. By electronic mail on September 7, 2018, USDA acknowledged receipt of the Adcock External Communications FOIA Request. USDA assigned this request the tracking number 2018-OSEC-05398-F.

14. American Oversight has not received any further communications from USDA regarding this FOIA request.

School Lunch FOIA Request

15. On November 27, 2018, American Oversight submitted a FOIA request to USDA requesting:

1. All calendar invitations or entries (or attachments to calendar invitations or entries) for any meeting related to the development or issuance of the memorandum issued on May 22, 2017 on the subject "School Meal Flexibilities for the School Year 2017-2018," assigned the memo code SP 32-2017.
2. All calendar invitations or entries (or attachments to calendar invitations or entries) for any meeting related to the promulgation of the interim final rule entitled "Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements," 82 FR 56703, published on November 30, 2017.
3. All records prepared or circulated in connection with the meetings described in Items 1 or 2, including but not limited to: agendas, lists of attendees, slide decks, briefing documents, read-aheads, or background materials.
4. All communications (including but not limited to email messages, email attachments, text messages, instant messages on platforms such as Lync, Slack, or Google Hangouts) including at least one person identified in

Column A below (or any person acting on their behalf) and at least one person or entity identified in Column B below and related to nutritional requirements, standards, or limitations for sodium, whole grains, sugar, or sweetened milk in Child Nutrition Programs. This request includes, but is not limited to, correspondence related to (a) the May 22, 2017 memorandum described in Item 1; (b) the interim final rule described in Item 2; or (c) the Healthy Hunger-Free Kids Act (or “HHFKA”).

| Column A | Column B |
|---|--|
| <ul style="list-style-type: none"> • Secretary Sonny Perdue • Under Secretary for Food, Nutrition, and Consumer Services • Chief of Staff to the Under Secretary for Food, Nutrition, and Consumer Services • Policy Advisor, Food, Nutrition, and Consumer Services • Administrator, Food and Nutrition Service • Deputy Administrator, Office of Policy Support, Food and Nutrition Service • Deputy Administrator, Child Nutrition Programs, Food and Nutrition Service • Director, Policy and Programs Development Division, Child Nutrition Programs • Any other political appointee or career SES employee in the Office of the Secretary, Food, Nutrition, and Consumer Services, the Food and Nutrition Service, or the Child Nutrition Programs | <ul style="list-style-type: none"> • School Nutrition Association (schoolnutrition.org) • Schwan's Food Service (schwansfoodservice.com) • Conagra Brands (conagrabrands.com) • American Frozen Food Institute (affi.org) • Tyson Foods (tysonfoods.com) • Archer Daniels Midland Company (adm.com) • PepsiCo (pepsico.com) • Aramark (aramark.com) • Sodexo (sodexousa.com) • Compass Group (compass-usa.com) • Grocery Manufacturers Association (gmaonline.org) • Dean Foods (deanfoods.com) • Perdue (perduefoodservice.com) • Cargill (cargill.com) • National Dairy Council (nationaldairycouncil.org) • Snack Food Association (snacintl.org) • American Pizza Community (americanpizzacomunity.com) • Pilgrim's Pride (pilgrims.com) • Kellogg's (kelloggs.com) • General Mills (generalmills.com) • Uncle Ben's (unclebens.com) • Mars, Inc. (mars.com) • International Dairy Foods Association (idfa.org) |

For both requests, the search should include individuals and entities in Category B as search terms, and as entries in the to/from/cc/bcc fields of emails or calendar entries/invitations, and as participants in text, chat, or instant messages (including group texts, chats, or instant messages). The

search should include any individuals serving in the roles listed above in either an acting or a permanent capacity.

American Oversight requests records from January 20, 2017, through December 31, 2017, for Items 1-3 of this request and records from January 20, 2017, through the date of the search for Item 4.

16. By electronic mail on November 27, 2018, USDA acknowledged receipt of this FOIA request. USDA assigned this request the tracking number 2019-DA-01116-F.

17. American Oversight has not received any further communications from USDA regarding this FOIA request.

Exhaustion of Administrative Remedies

18. As of the date of this Complaint, USDA has failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records USDA intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

19. Through USDA's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records

20. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

21. American Oversight properly requested records within the possession, custody, and control of USDA

22. USDA is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

23. USDA has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

24. USDA's failure to conduct adequate searches for responsive records violates FOIA and USDA regulations.

25. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

26. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

27. American Oversight properly requested records within the possession, custody, and control of USDA.

28. USDA is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

29. USDA is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

30. USDA is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

31. USDA's failure to provide all non-exempt responsive records violates FOIA and USDA regulations.

32. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: March 7, 2019

Respectfully submitted,
/s/ Elizabeth France
Elizabeth France
D.C. Bar No. 999851

/s/ Daniel McGrath
Daniel McGrath
D.C. Bar No. 1531723

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